IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1034 of 1993

Devaki .. Appellant

-Vs-

Kuppu Ammal .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 23.6.1993 in A.S.No.16 of 1992 on the file of the Principal District Judge of South Arcot, Cuddalore, confirming the judgment and decree dated 20.12.1991 in O. S.No.441/1990 on the file of the Principal District Munsif, Cuddalore.

!For Appellant : Mr.V.Kannan

^For Respondent : Mrs.Hema Sampath

:JUDGMENT

Aggrieved over the judgment of the Principal District Judge, Cuddalore, made in A.S.No.16 of 1992, affirming the judgment of the trial Court in a suit for permanent injunction, the defendant has brought forth this second appeal.

2. The following facts are noticed in the pleadings of the parties: The property situated in T.S.Nos.2225 and 2229 at Vilvarayanatham, Cuddalore, belonged to the Government. They were converted into house sites by the Government and assigned to several persons including the plaintiff. The assignment was made in favour of the plaintiff under a deed dated 12.3.1973, and plot No.25 was granted to her. At the time of assignment, numbers were not actually given to the plots. The plaintiff paid a sum of Rs.2,031/- to the Government in that regard and put up a thatched house in the property. She has been residing there. She has been in possession and enjoyment of the property for more than 17 years, and thus, she prescribed absolute title to the same. The assessment of the property stands in the name of the plaintiff, and she has been paying the tax. The husband of the defendant by name Kumarasamy gave an application to the Collector stating that the plaintiff was enjoying plot No.37 while she was assigned a different plot. An enquiry was conducted, wherein it was found that the plaintiff has been in possession of the property for more than 17 years. However, Kumarasamy managed to get a sale deed from Munusamy, who was allotted plot No.37. The

said sale deed is not true and valid. The defendant gave troubles to the plaintiff's peaceful possession and enjoyment of the suit property, which necessitated her to file the suit.

3. The defendant contested the suit by stating that the alleged assignment in favour of the plaintiff is not true and valid; that the boundaries given in the plaint refer only to plot No.37 and not plot No.25; that plot No.37 was originally assigned to one Munusamy, and he was in possession and enjoyment of the same; that he entered into an agreement of sale with the defendant on 30.3.1977, and he sold the same to the defendant on 2.4.1990; that on application, the assessment was changed in favour of the defendant on 15.5.1990; that having got assignment of plot No.25, the plaintiff is not entitled to claim title or possession in respect of the suit property, and hence, the suit was to be dismissed.

4. On the above pleadings, the trial Court framed the necessary issues, tried the suit and decreed the same. An appeal by the aggrieved defendant was also dismissed by the first appellate forum. Hence, this second appeal has been brought forth by the defendant.

5. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions.

6. The respondent/plaintiff, who sought the relief of permanent injunction, came out with a specific case stating that the plaint Schedule mentioned property is situated in T.S.Nos.2225 and 2229 of Vilvarayanatham, Cuddalore; that it belonged to the Government; that the Government assigned the same to several persons including the plaintiff; that one such assignment was made in favour of the plaintiff on 12.3.1973 as evidenced by Ex.A1, the deed of assignment; that as per Ex.A1 , the assignment in respect of plot No.25 in the above said survey numbers was granted to the plaintiff; that at the time of assignment, numbers were not actually given to the plots; that when the plaintiff approached the Tahsildar, she was informed that the property, mentioned in the plaint Schedule, has been granted to her, and hence, she occupied the same, put up construction and made a payment of Rs.2,031/- as stipulated in the document; that a thatched shed was raised in the property; and that she has been in possession and and enjoyment of the same all along. In order to prove her possession and enjoyment of the suit property, the plaintiff examined herself as P.W.1, and her evidence was corroborated by the evidence of P.Ws.2 and 3. She has also relied on tax receipts. It is true that those documents were of the year 1989 i.e. before the filing of the suit. She sought for the permanent injunction alleging that the defendant was attempting to interfere with her peaceful possession and enjoyment. The suit was resisted by the defendant stating that what was assigned to the plaintiff was plot No.25 and not plot No.37; but, plot No.37 was assigned to one Munusamy; that pursuant to the assignment, he got into possession of the property; that he has also entered into an agreement in the year 1977; that pursuant to the agreement, the defendant has been in possession from the year 1977; that in 1990, the said Munusamy executed a sale deed, and thus, she has become the owner of the property, and the plaintiff cannot ask for an injunction against the true owner namely the defendant, in respect of plot No.37.

7. The learned Counsel for the appellant would lay emphasis that both the Courts were erroneous in granting the injunction in favour of the

plaintiff, who should be termed as a trespasser into the property, and injunction should not be granted against the true owner, the defendant, who acquired title to the property from the assignor under the sale deed in the year 1990. The specific case of the plaintiff was that though under Ex.A1, the plot No.25 was assigned to her, she was put in possession of the plaint mentioned property, where she has raised a construction and has been in enjoyment of the same for nearly 17 years. It is true that under Ex.A1, plot No.25 was assigned to the plaintiff. But, according to the plaintiff, at the time the assignments were made, the proper numbers were not given to the plots, and she was shown the property in question as the property that was assigned to her, and hence, she occupied the same. It is pertinent to note that original assignment was in respect of a vacant site, wherein the plaintiff has raised a hut and is residing all along. This fact is spoken to by P.Ws.2 and 3. At this juncture, it has to be pointed out that Ex.B1 relied on by the defendant, would indicate that the plot No.37 was assigned in favour of one Munusamy. According to the defendant, examined as D.W.1, he entered into an agreement with the said Munusamy in the year 1977, and he was put in possession of the property, and in 1990, a proper sale deed was executed in her favour by the said Munusamy, and thus, the defendant has been in possession of the property from 1977 till the date of the suit. From the available evidence, it would be abundantly clear that from the time of the assignment till the time the suit was filed by the plaintiff, the plaintiff has been in possession and enjoyment of the property and not either the said Munusamy or the defendant. Even the said Munusamy, examined as D.W.2, has deposed that he was in possession of the property only for four months; that he left the possession with the defendant pursuant to an agreement, and thus, the defendant got into possession of the property; and that in 1990, he executed a sale deed in that regard. Both the Courts below have clearly pointed out that the plea of possession by the defendant was to be rejected, since there was absolutely no evidence to hold so.

8. So far as the contention put forth by the learned Counsel for the appellant that Ex.B1, assignment, would show that plot No.37 was assigned to the said Munusamy, who in turn has sold the same to the defendant, and thus, the defendant is the true owner of the property, and hence, the injunction cannot be granted in favour of the plaintiff against the true owner. It is settled position of law that the injunction cannot be granted in favour of a trespasser against the true owner. In the instant case, the Court is unable to agree with the contention put forth by the learned Counsel for the appellant that the plaintiff is a trespasser into the property. From the pleadings and from the evidence also, it would be clear that though in Ex.A1, the deed of assignment, the plot No.25 was mentioned, the plaintiff was actually put in possession by the authorities of the suit property immediately following the assignment, and thus, she has been in possession all along. In such circumstances, the contention of the appellant's side that the plaintiff is a trespasser cannot be accepted. The defendant claims title to the property pursuant to the sale deed executed by the said Munusamy, alleging that he was in possession, and the defendant was also put in possession from the year 1977 till the date of the suit. But, no material is available to accept that either the said Munusamy or the defendant was in possession of the property at any point of time. In such circumstances, the possession of the plaintiff at present has got to be protected. If the defendant feels that she

was entitled to the property, there cannot be any impediment for her to approach the Court of law for getting a declaration in her favour. Hence, the Court is unable to agree with the contentions put forth by the appellant's side. There is nothing to interfere in the concurrent finding recorded by the Courts below.

9. For the foregoing reasons, this second appeal deserves to be dismissed, and it is, accordingly, dismissed, leaving the parties to bear their costs.

Index: yes
Internet: yes

To:
1. The Principal District Judge
Cuddalore

2. The Principal District Munsif
Cuddalore

3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/

□